



LIMITS OF FREEDOM OF EXPRESSION OF JUDGES

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MAIN FINDINGS

- **Freedom of expression of judges is protected**, including their ability to participate in the discussions which concern efficient functioning of the judiciary. Furthermore, when exercising this right, a judge must not act against the interests of justice, impartiality, and independence.
- **The High Council of Justice (HCJ) is obligated to protect the reputation of the judiciary and that of individual judges.** The Bangalore Principles¹ and the Rules of Judicial Ethics of Georgia apply to the judicial members of the HCJ when they are fulfilling this role. Unfortunately, **actions by some of the judicial members of the HCJ have often failed to correspond to the high status of the judicial office and violated the standards of ethics.**
- **A judge is not prohibited from using social media.** However, similar to other cases, a judge must refrain from expressing opinions which would harm the interests of justice. In the Georgian reality, in a number of cases, the form of expression on the part of individual judges has not complied with the recognised ethics standards, which ultimately undermines public trust in justice.
- **It is important that judges distance themselves from political activities.** A judge must avoid any statements and/or actions of political nature which may cast doubt on his or her impartiality. Contrary to this, **Judge Levan Murusidze participated in the public debate with a single-seat district candidate in the run up to the parliamentary elections where he failed to make an impression of being an impartial and independent judge.** The opinions that Murusidze expressed during the debate were fully in line with the statements which had been made by the government representatives and aimed to discredit the candidate from a single-seat district. His action was one of the most severe violations of freedom of expression
- **In the conditions of complete and unchecked power of an influential group of judges**, public criticism of concrete persons on the part of individual influential judges must be assessed as a dangerous precedent.
- **Not all violation of freedom of expression constitute grounds for disciplinary liability.** Disciplining all cases of unethical expression may have a “chilling effect” on the emergence or realization of a different opinion in the system. Liability should be imposed only on such actions that are unambiguously provided for in the Organic Law on Common Courts.
- **A judge must not have an expectation that exercising the right to freedom of expression would result in disciplinary sanctions.** In the Georgian judicial system, expression of critical opinions by judges is not encouraged. Moreover, members of the Unity of Judges were gradually expelled from the system because of [expressing] dissenting opinions in the past. Things went as far as launching disciplinary proceedings against some of them.
- **Speaker-judges hardly communicate with the public.** This institution in its current form is unable to fulfil the task of efficient communication with the public.

1 An international document defining basic standards for ethical judicial conduct.

METHODOLOGY

This study aims to establish the limits of freedom of expression of judges; to define the role of the HCJ in the process of communication with the public; and to determine the standards that the judges must use as guidelines when exercising the right to freedom of expression.

To conduct the research, the project team used the following methods and sources of obtaining and analysing information:

Both local and international legislation and practice were analysed within the framework of the research; various kinds of publicly available information were processed, including that obtained from TV, social media and official statements made by common courts; based on this, corresponding recommendations were developed.

At the stage of writing the main findings and of developing the recommendations, the research team considered the situation currently prevailing in the common courts system, the events that unfolded since 2012, and the general context.

INTRODUCTION

Freedom of expression is one of the fundamental human rights. It is particularly important for transitional democracies such as Georgia. [The ability to] exercise this right in an effective manner essentially defines the degree of democracy in a country. In addition, unjustified restrictions of this right impede the establishment of a democratic society as it is impossible to form a democratic society without steadfastly protecting human rights and freedoms.

Any person, including judges, must be able to exercise their right to freedom of expression. However, there are values that must be protected. For example, independent judiciary and its authority, which are critically important for a rule-of-law state to properly function. Words publicly spoken by a judge may damage the interests of justice and/or the public perception concerning impartiality and independence of the judicial system. For the Georgian justice system, such instances are not at all hypothetical. Quite frequently, judges make statements which may violate the rules of ethics and make negative impressions on the public.

The public needs to have sufficient information about the events unfolding within the system, which ensures both an increase of trust in the judiciary as well as improved access to justice. To this end, the judiciary must be proactive and initiate communication concerning reforms or ongoing significant events.² It is important to analyse, however, who could establish efficient communication with the public. The role of an individual judge in this process is also interesting.

It is a generally accepted view that expression itself is the best way of balancing out freedom of expression.³ Judicial authority is linked to such values as truth, justice and freedom. Therefore, judges must perform their duties in accordance with the highest standards of professional conduct, which facilitates developing trust towards individual judges as well as the judiciary.⁴ Correspondingly, it is interesting to look at the limits of freedom of expression of judges in the context of judicial ethics [rules]. The goal of this research is to examine the line between freedom of expression of judge, the observance of judicial ethics and disciplinary liability.

2 European Network of Councils for the Judiciary 2011/2012 Project on Judiciary, Society and the Media. Available at: <https://bit.ly/3sWoH2g> [last accessed on 22.02.2021]

3 Constitutional Court of Georgia, Decision N1/6/561,568 of 30 September 2016 on the case of *Citizen of Georgia Iuri Vazagashvili v. Parliament of Georgia*, II, 50.

4 CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE) OPINION NO. 18 (2015) “The position of the judiciary and its relation with the other powers of state in a modern democracy”, para. 16-19, London, October 2015; available at: <https://bit.ly/2PUxraY> [last accessed on 22.02.2021]

I. FREEDOM OF EXPRESSION OF JUDGES

1.1. INTERNATIONAL STANDARDS OF RESTRICTIONS ON FREEDOM OF EXPRESSION OF JUDGES

Article 10 of the European Convention stipulates that “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”.⁵ Convention also provides a detailed list of all legitimate reasons which allow to restrict these rights: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”⁶

Article 10 of the European Convention provides for extremely important guarantees of protection of freedom of expression. Judges, too, have the right to freedom of expression. However, given the specificities of their work and in order to ensure their independence and impartiality, limiting their freedom of expression may be considered legitimate.⁷ Freedom of expression of judges can be restricted if this is defined by the law and is necessary to achieve a legitimate goal, namely, to protect independence, impartiality and authority of the judiciary.⁸

The European Court of Human Rights (ECHR) establishes the need to maintain a fair balance between freedom of expression of a person and legitimate interests of a democratic state.⁹ The restrictions imposed on judges must not influence the essence of the rights protected under Article 10 of the Convention.¹⁰ The status of a judge does not automatically invoke restrictions on freedom of expression, however, a judge must refrain from expressing such opinions which cast doubt on the authority and impartiality of the judiciary.¹¹ When assessing the proportionality of interfering with freedom of expression of judges, the ECHR considers the circumstances of a given case, including a position assumed by a judge, content and context of questionable statements as well as the nature and severity of sanctions used against a judge.¹²

For example, in the case *Baka v. Hungary*, the applicant, who was the chairperson of the Supreme Court and the National Council of Justice, was dismissed from his post because of his assessment of the legislative amendments passed regarding the judiciary. The Court ruled that

5 Convention for the Protection of Human Rights and Fundamental Freedoms, Article 10, para. 1.

6 Convention for the Protection of Human Rights and Fundamental Freedoms, Article 10, para. 2.

7 European Commission for Democracy through Law (Venice Commission), Report on the Freedom of Expression of Judges, 23 June 2015, para. 80.

8 Human Rights Council, Report of the Special Rapporteur on the Independence of Judges and Lawyers, 29 April 2019, paras. 32-34.

9 Dijkstra, The Freedom of the Judge to Express his Personal Opinions and Convictions under the ECHR, 13 (1) *Utrecht Law Review* (2017).

10 *Kudeshkina v. Russia*, no. 29492/05, 26 February, 2009, para. 85.

11 *Wille v. Liechtenstein* [GC], no. 28396/95, ECHR 1999-VII, para. 64.

European Commission for Democracy through Law (Venice Commission), Report on the Freedom of Expression of Judges, 23 June 2015, paras. 65-67.

12 European Commission for Democracy through Law (Venice Commission), Report on the Freedom of Expression of Judges, 23 June 2015, para. 83.

the applicant's freedom of expression was violated by his dismissal because not only did he have the right but was professionally obligated to express his opinion about the judicial reform.¹³

The content of a statement made by a judge is also important. A judge's statement may have political implications but, in such a case, the significance of its content for public discussion should be assessed. In the case of *Kudeshkina v. Russia*, a judge's assessments concerning independence of the judiciary were within the scope of freedom of expression because her statements about alleged pressure on judges were important and topical for the public.¹⁴

Trust in the judiciary is an extremely important guarantee of efficient administration of justice. The conduct of judges is always in the spotlight of public attention and often determines the specificities of perception of his or her impartiality. Correspondingly, the conduct of judges must comply with the requirements of impartiality, objectivity, fairness, equality, professionalism and diligence.¹⁵ A judge, along with institutional and individual independence, must be impartial. He or she must perform duties without favouritism, bias and prejudice, must avoid discrimination in the process of justice administration, act on the premise of equality of parties and ensure fair trial, refrain from any political activity which may undermine his or her independence and play a negative role in public perception of his or her impartiality.¹⁶

The Bangalore Principles of Judicial Conduct define the minimal standards of ethical conduct of judges and form a regulatory framework of judicial conduct.¹⁷ The Bangalore Principles define six values of judicial conduct; in the context of freedom of expression, the principles of impartiality and propriety of judges are important.

The obligation of impartiality applies not only to decisions but also to the processes which result in these decisions. Judicial conduct must protect and increase trust in judicial impartiality both on the part of the public as well as legal professionals and parties.¹⁸

A judge must refrain from such actions or statements which may weaken the perception of judicial impartiality. The appearance of the perception of bias is almost inevitable when actions of a judge draw attention and cause criticism and/or counterarguments.¹⁹

A judge is authorised to make a public statement if it is aimed at the protection of judicial institutions or human rights and the rule of law. However, even in such a case, a judge must be as moderate as possible so that the opinion he or she voices does not create a perception of affiliation with a particular issue or political bias.

In the event a court decision becomes subject of public criticism, a judge must refrain from providing a response. It is better if the appropriateness of a judge's position and deliberation is defined by his or her decision.²⁰ It is unacceptable for a judge to defend his or her decision publicly, outside of a courtroom. If the media provide an inaccurate coverage of court proceedings or decisions, and a judge believes that this mistake must be corrected, a judicial secretariat may

13 *Baka v. Hungary [GC]*, no. 20261/12, 23 June 2016.

14 *Kudeshkina v. Russia*, no. 29492/05, 26 February, 2009, paras. 94-95.

15 Consultative Council of European Judges (CCJE), Opinion no. 3 on the Principles and Rules Governing Judges' Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality, paras. 22-26.

16 Consultative Council of European Judges (CCJE), Opinion no. 3 on the Principles and Rules Governing Judges' Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality, para. 50 European Charter on the Statute for Judges, DAJ/DOC (98) 23, para. 4.3.

17 Human Rights Council, Report of the Special Rapporteur on the Independence of Judges and Lawyers, 29 April 2019, para. 38.

18 The Bangalore Principles of Judicial Conduct (2002), para. 2.2.

19 Commentary on the Bangalore Principles of Judicial Conduct (September, 2007) para.65.

20 Consultative Council of European Judges (CCJE), Opinion no. 3 on the Principles and Rules Governing Judges' Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality para. 40.

issue a press release expressing the position of the court.²¹ In addition, in order to maintain the perception of impartiality among the public, it is important to be as prudent as possible when communicating with the media and refrain from offering explanations which may become a subject of interpretation.²²

Propriety is considered essential for any activity of a judge. Like any other citizen, a judge has the right to express his or her opinions; when exercising such right, however, a judge must comport himself or herself in such a manner as to preserve the dignity of the judicial office, the impartiality and independence of the judiciary.²³

A judge must refrain from becoming involved in public debate. If a judge becomes involved in public discussions, expresses his or her opinions concerning controversial issues, engages in arguments with public figures, or criticises a government or other groups of people, this judge will no longer be perceived as an impartial arbiter in the process of making a judicial decision.²⁴ A judge must refrain not only from participating in political activities but also from participating in such debates of political context or nature.²⁵

A judge is entitled to talk publicly about such topics which directly affect the fundamental issues of exercising judicial authority or are notable due to strong public interest.²⁶ A judge must express his or her opinion cautiously, in order to avoid creating a perception that he or she is endorsing the government or indicating what kind of decision he or she would make in the conditions of a specific dispute. In addition, individual judges must understand that their opinions may be perceived as a position of the judiciary rather than their personal opinion.²⁷

A judge may criticise existing legislation and express a wish for specific legislative amendments. Such expression is acceptable if it is constructive.²⁸

A judge may express an opinion in line with his or her dignity, moral and values. For example, in exercising freedom of expression, a judge may join a demonstration, hold a protest banner, or sign a petition which aims to condemn war, support environmental protection or mechanisms of poverty eradication.²⁹

21 Commentary on the Bangalore Principles of Judicial Conduct (September, 2007) paras. 74-75. Consultative Council of European Judges (CCJE), Opinion no. 3 on the Principles and Rules Governing Judges' Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality para. 40. Judges: Independence, Efficiency, and Responsibilities, Recommendation CM/REC(2010)12 and Explanatory Memorandum, paras. 19 and 27.

<https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809f007d>

22 *Buscemi v. Italy*, no. 29569/95, ECHR 1999-VI, para. 67.

Human Rights Council, Report of the Special Rapporteur on the Independence of Judges and Lawyers, 29 April 2019, para. 50.

23 The Bangalore Principles of Judicial Conduct (2002), para. 4.6.

24 Commentary on the Bangalore Principles of Judicial Conduct (September, 2007) para. 136.

25 Consultative Council of European Judges (CCJE), Opinion no. 3 on the Principles and Rules Governing Judges' Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality paras. 30-31.

26 *Baka v. Hungary [GC]*, no. 20261/12, 23 June 2016, para. 171.

27 Commentary on the Bangalore Principles of Judicial Conduct (September, 2007) para. 138.

Consultative Council of European Judges (CCJE), Opinion no. 3 on the Principles and Rules Governing Judges' Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality para. 34.

28 Consultative Council of European Judges (CCJE), Opinion No. 18, The position of the Judiciary and its Relation with the other Powers of State in a Modern Democracy, 16 October 2015, para. 42

29 Commentary on the Bangalore Principles of Judicial Conduct (September, 2007) para. 140.

1.2. LOCAL STANDARDS OF RESTRICTIONS ON FREEDOM OF EXPRESSION OF JUDGES

The Constitution of Georgia protects the right to have and freely express opinions.³⁰ However, it also defines preconditions for restricting this right, according to which, “The restriction of these rights may be allowed only in accordance with law, insofar as is necessary in a democratic society for ensuring national security, public safety or territorial integrity, for the protection of the rights of others, for the prevention of the disclosure of information recognised as confidential, or for ensuring the independence and impartiality of the judiciary.”

Despite the fact that freedom of expression is extremely important, it is not absolute and may be restricted in order to protect the rights and freedoms of others. According to the Constitution of Georgia and the European Convention, in order to ensure that the restriction of freedom of expression is in line with the Constitution and the Convention, it must pass the so-called “three-prong test”. Specifically, legal definitions, existence of legitimate reasons, and the issue of the need and proportionality of a restriction must be checked.

According to the Constitution of Georgia, a judge is prohibited from joining a political party or engaging in political activities.³¹ In addition, separate provisions prohibit judges from talking publicly about cases under his or her consideration or cases considered by other judges.³² However, the Constitution does not establish any different regulations concerning specifically the restriction of freedom of expression of judges. It should be noted that, in most of the European countries’ constitutions, there are no constitutional provisions regulating specifically freedom of expression of judges either.³³ Correspondingly, a question arises whether this state of affairs allows us to say that a judge is just as free in exercising the right to freedom of expression as any other person. To answer this question, we need to analyse the role of a judge in the establishment of an impartial and rights-oriented justice system.

A judge serves the public in such an important area as justice administration. Whether performing professional duties or other activities, a judge is an important foundation of public trust in the judiciary and of judicial authority. Personality and public conduct of a judge are of particular importance. Any public statement or action on the part of a judge has a direct effect on the judicial system since the public extends the impression received by observing a judge to the system as a whole. This is precisely why there are rules of judicial ethics as well as numerous documents adopted by international institutions which establish the standards concerning the status and the conduct of judges. Correspondingly, both public and professional circles pose high demands with regard to judicial conduct. Given these demands and expectations, any action on the part of a judge may become subject to broad criticism. Within the framework established by the law, a judge may also be criticised for his or her decisions, arguments or proceedings.³⁴ Despite this, a judge must understand the public nature of his or her position, and should not be too sensitive about such criticism. Criticism of persons who hold public posts is an ordinary occurrence in a democratic state.

Freedom of expression is guaranteed for judges the same way it is for any other citizen, however, when exercising this right, judges must consider and protect the

30 Constitution of Georgia, Article 17, paras. 1 and 2.

31 Constitution of Georgia, Article 63.4.

32 Rules of Judicial Ethics of Georgia, Article 16

33 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) REPORT ON THE FREEDOM OF EXPRESSION OF JUDGES Adopted by the Venice Commission, at its 103rd Plenary Session (Venice, 19-20 June 2015), para 10. Available at: <https://bit.ly/2NWYs8I> [Last accessed on 27.02.2021]

34 Commentary on the Bangalore Principles of Judicial Conduct, para.39, 2007; available at: <https://bit.ly/3rdh72Z> [last accessed on 27.02.2021]

high status of a judicial office. A single case of abuse of this right may inflict an irreparable damage on the judicial authority.

1.3. A LINE BETWEEN JUDICIAL ETHICS AND FREEDOM OF EXPRESSION

In the past several years, the judiciary has been criticised by the public particularly strongly. For years now, the civil society has been talking about a group of influential judges within the justice system which hampers the establishment of an independent, impartial and objective judiciary. The criticism on the part of the civil society sector has been directed against both the HCJ, the ruling tier of the judiciary, as well as the judges closely connected to the group of influential judges. It is interesting to look at the scope within which a judge can respond to such criticism.

As mentioned above, judges are entitled to freedom of expression by the Constitution, although it should also be noted that exercising this right must not damage judicial authority. “The system of justice in general and each individual judge through their daily activities must consolidate judicial independence and impartiality and work to form a corresponding public perception.”³⁵ This is precisely why judges are restricted in their activities by the rules of professional ethics. The Conference of Judges of Georgia, upon nomination by the HCJ of Georgia, adopts the Rules of Judicial Ethics. In turn, these rules of ethics are based on the Constitution and the laws of Georgia as well as international judicial values in the area of judicial ethics, including the Bangalore Principles of Judicial Conduct.³⁶

Correspondingly, a fair balance must be established between judicial ethics and freedom of expression of judges.

Judicial Ethics

According to the Rules of Judicial Ethics, a judge is not prohibited from exercising the right to freedom of expression. However, “Any opinion expressed by a judge shall not incur any damage to dignity, impartiality and independence of the judiciary.”³⁷ In addition, a judge in his or her statements must maintain appropriate civility, refrain from using insulting or humiliating words or phrases, or discriminating terminology. A judge must also pay attention to the place and the situation in which he or she is making a statement, so that the public does not perceive it as addressing only one organisation or group. Furthermore, a judge must be cautious when speaking at public meetings so that his or her opinion is not considered to constitute political support or bias. A judge must not engage in political activity [...] or speak on behalf of a political organisation. A judge must not publicly express his or her political views.³⁸ *Correspondingly, the Rules of Ethics establish certain limits to exercising this constitutional right.*

Based on the Rules of Ethics, it can be said that a judge must refrain from expressing an opinion which could be assessed as biased by the public. Also, in the context of freedom of expression

35 Tbilisi Court of Appeals, decision of 6 August 2015 on the case No N2b/6293-14, available at: <https://bit.ly/3skZWfF> [last accessed on 22.02.2021]

36 The 2001 Code of Judicial Conduct or the “Bangalore Draft”, (later – the Bangalore Principles) was adopted by a group of judges with the aim of consolidating the unity of the judicial branch; it was revised in November 2002 in The Hague, within the framework of Supreme Court chairpersons’ round table.

37 Rules of Judicial Ethics of Georgia, Article 15. Available at: <https://bit.ly/37VeOK0> [last accessed on 28.02.2021]

38 Rules of Judicial Ethics of Georgia, Article 20, 21, 26,27. Available at: <https://bit.ly/37VeOK0> [last accessed on 28.02.2021]

of judges, a stance taken by a judge, and the content and context of his or her statement must be considered.³⁹

A judge, as a person who has moral values, may, in a number of cases, even consider it to be his or her duty to express certain opinions. For example, on issues such as a country's occupation. In such cases, a judge can express his or her views openly and support the country's de-occupation and territorial integrity. Correspondingly, a judge can express concern with regard to the problems which also concern local population or the international society.

As for the criticism directed at judges, the public has the right to openly express their opinions about the shortcomings or mistakes of a judge as well as about the decisions he or she makes.

In the past several years, public criticism has intensified with regard to the events unfolding within the judiciary. For years now, the non-governmental sector has been talking about the problems which threaten the establishment of an independent, impartial and objective justice system in the country.⁴⁰ In response to the criticism voiced by the civil society, some influential judges and politicians have, from time to time, demanded that freedom of expression with regard to the judiciary be regulated.⁴¹ In their opinion, criticism undermines judicial authority and makes the public lose its trust in it. However, not only is the criticism of the judiciary not a threat to the judiciary, but it also helps improve the judicial system. In order to efficiently tackle the problems prevailing within the system, these problems should first and foremost be identified in a timely manner.

According to the explanation offered by the Constitutional Court, "In a democratic state, the importance of public oversight of the administration of justice and, especially, of the acts issued by the court, is extremely high. This ensures that each member of the public has an opportunity to exercise public control over the judiciary. People must be able to assess each court decision, explanation, and resolution, and make them subject of broad public discussion. Public oversight of this branch of power which operates independently from other branches is particularly important."⁴²

When the public can assess and express critical opinions about court decisions, the systemic flaws and trends within the judiciary become particularly clear. However, in order for a judge to remain independent and impartial, he or she must refrain from making public statements which concern ongoing court cases. During such times, it is particularly difficult for the public to maintain the perception of a judge's impartiality if he or she is involved in a [public] discussion. For example, the Bangalore Principles point out that "The better and wiser course is to ignore any scandalous attack rather than exacerbate the publicity by initiating contempt proceedings."⁴³

39 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), REPORT ON THE FREEDOM OF EXPRESSION OF JUDGES, Strasbourg, 23 June 2015, para. 67.

40 See research: Transparency International Georgia, "Corruption Risks in Georgian Judiciary", 2018, pp. 18-31. <https://bit.ly/2Pxr21T> [last accessed on 22.02.2021].

41 "Protection of the Public From Libel or Attempt to Restrict Freedom of Speech?" Media Checker, 12 January 2019; available at: <https://bit.ly/3f9bNuj>

42 Constitutional Court of Georgia, Decision N1/4/693,857 of 7 June 2019 on the case of *N(N)LP Media Development Foundation and N(N)LP Institute of Development of Freedom of Information v. Parliament of Georgia*.

43 Commentary on the Bangalore Principles of Judicial Conduct, p.90, 2007; available at: <https://bit.ly/3rdh72Z> [last accessed on 27.02.2021]

According to the traditional viewpoint, a judge must distance himself or herself from the public in order to preserve independence and impartiality.⁴⁴ The Venice Commission establishes an opposing view, according to which “[t]he judicial system can only function properly if judges are not isolated from the society in which they live (...). As citizens, judges enjoy the fundamental rights and freedoms protected, in particular, by the European Convention on Human Rights (...). However, such activities may jeopardise their impartiality or sometimes even their independence. A reasonable balance therefore needs to be struck between the degree to which judges may be involved in society and the need for them to be and to be seen as independent and impartial in the discharge of their duties”.⁴⁵

To define the acceptable degree of freedom of expression of judges, two fundamental factors need to be considered: the first is whether a judge is involved in activities that may objectively undermine [confidence in] his or her impartiality; second, whether involvement in such activities may expose a judge to political attacks or whether such involvement is incompatible with the status of the judicial office. In both cases, a judge must avoid involvement in such activities.⁴⁶ However, it is also important to clarify that even if there is a threat of political attacks, if the judge’s actions serve the interests of justice, restricting such expression is inadmissible.

Political Activity of Judges

It is particularly important for judges to distance themselves from political activity. The constitutions of the member states of the Council of Europe do not define freedom of expression of judges differently but do unequivocally prohibit political activity of judges.⁴⁷ In most countries, judges cannot openly express their political views, join political parties, participate in political party assemblies, or be involved in any kind of political activity which could cast doubt on their independence or affect public trust in the judiciary.⁴⁸

Our understanding of political activity cannot be limited to political party membership alone – something that judges are unequivocally prohibited from doing by the Constitution of Georgia⁴⁹; any statement and/or action of political nature, remarks on political issues which are not related to judicial activity of a judge and which could undermine confidence in judicial impartiality are also considered as such. Actions or statements in support of a concrete political party or force automatically means that a judge is publicly choosing a side. An impression of bias grows stronger if a judge is criticised or reproached for his or her actions, which is usually inevitable. In other words, a judge who uses the high-level platform of the judiciary for making political statements endangers public trust in the judicial authority and its impartiality.⁵⁰ However, such restriction on political activity does not rule out a judge’s right to have a personal opinion about a political party.

44 EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ) “Breaking up judges’ isolation, Guidelines to improve the judge’s skills and competences, strengthen knowledge sharing and collaboration, and move beyond a culture of judicial isolation”, December 2019, Strasbourg. Available at: <https://bit.ly/3I9oSED> [last accessed on 27.02.2021]

45 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) REPORT ON THE FREEDOM OF EXPRESSION OF JUDGES Adopted by the Venice Commission, at its 103rd Plenary Session (Venice, 19-20 June 2015), para.8. Available at: <https://bit.ly/2NWyS8I> [last accessed on 27.02.2021]

46 Commentary on the Bangalore Principles of Judicial Conduct, para.134, 2007; available at: <https://bit.ly/3rdh72Z> [last accessed on 27.02.2021]

47 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), REPORT ON THE FREEDOM OF EXPRESSION OF JUDGES, Strasbourg, 23 June 2015; paras. 10, 16

48 Independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers, Human Rights Council Forty-first session 24 June–12 July 2019; para. 73, available at: <https://undocs.org/A/HRC/41/48> [last accessed on 27.02.2021]

49 Constitution of Georgia, Article 63.4.

50 Commentary on the Bangalore Principles of Judicial Conduct, para. 65, 2007; available at: <https://bit.ly/3rdh72Z> [last accessed on 27.02.2021]

The expedience of judges' participation in debates of political nature must also be discussed. *When weighing the expedience of involvement in public debates, two factors need to be considered. First, whether a judge's participation in debates may cast doubt on his or her impartiality and, second, whether such involvement may expose a judge to political attacks. In both cases, a judge must refrain from participating in such debates.* To maintain public trust in the judicial system, judges must not become targets of political attacks as this is incompatible with the neutrality required by judicial authorities.⁵¹

Furthermore, the situation and the context that serve as a basis for a specific statement are important. For example, in the context of political debates, the domestic political background and significance of a discussion are especially important.⁵² Judges must avoid as much as they can the circumstances which may render their independence and impartiality questionable, and this is precisely the reason why the majority of the European countries have restricted political activities of judges.⁵³

This does not mean, however, that judges should completely remove themselves from participating in the discussion of public issues. For example, judges must be allowed to participate in such discussions which concern the judiciary in general. Moreover, they must be actively involved in such issues and participate in the discussions about correcting the flaws and better operation of the judicial system. Generally, making decisions concerning judicial system reform is unacceptable without the participation of judges.

Judicial appointment does not imply giving up on exercising the right to freedom of expression. At the same time, when performing their duties, judges must fully understand the ethical restrictions which apply to them.

A judge can express his or her opinion in defence of the institution of the judiciary or on the issues which concern protection of fundamental human rights and support for the rule of law. In addition, while judges have a limited ability to make public statements while performing their judicial duties, they can use all reasonable means, including the mass media, to make their position known in the event there is any kind of pressure or interference in the administration of justice. Not only are such actions in line with the judicial ethics rules, but they will also protect independence of both individual judges and the judiciary itself.

A judge can express his or her opinion on the issues which concern proper functioning of courts and/or independence of the judiciary. The events that unfolded in Poland in January 2020 can serve as the best example. Specifically, a new law adopted by the Polish authorities which effectively made it possible to discipline Polish judges for their decisions caused protest on the part of Polish judges and then judges of various European countries.⁵⁴ The judges from 20 European countries joined the so-called "silent rally" of their Polish colleagues. It was an unprecedented expression of solidarity which aimed to defend independence of justice not only in Poland but also some of the EU member states. By means of such protest staged by the

51 The Opinion no. 3 of the Consultative Council of European Judges, on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, para. 31, Strasbourg, 19 November 2002. Available at: <https://bit.ly/3b5LiDi> [last accessed on 27.02.2021]

52 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) REPORT ON THE FREEDOM OF EXPRESSION OF JUDGES Adopted by the Venice Commission, at its 103rd Plenary Session (Venice, 19-20 June 2015), para. 77; available at: <https://bit.ly/2NWyS8I> [last accessed on 27.02.2021]

53 General comment No. 25 (1996) on participation in public affairs and the right to vote, para. 12. available at: <https://bit.ly/3raWZOC> [last accessed on 27.02.2021]

54 See article, *EU challenges Poland over judicial independence*, The Guardian, October 2019; available at: <https://bit.ly/38422sG> [last accessed on 02.03.2021]

representatives of the European judicial associations, judges had stated that they effectively turned down the traditional approach that judges must only “speak through their decisions”.⁵⁵

It is important to note that in the event a judge expresses his or her opinion about an issue related to his or her judicial activity and this judge speaks as a representative of the judiciary, the constitutionally guaranteed freedom of expression falls under certain restrictions. In such a case, a judge must consider the rules of judicial ethics which obligate him or her to preserve trust in the judiciary. Correspondingly, the impartiality and independence of the judiciary would outweigh freedom of expression of an individual judge.

In practice, however, it is quite difficult to draw a line between constitutionally guaranteed freedom of expression on the one hand and the expression concerning the performance of judicial duties on the other. A judge’s statements may not be related to his or her judicial activity, however, an expression of personal opinions may become a reason for removing a judge from considering cases of a certain kind. Ultimately, to define the limits of the constitutional guarantees of freedom of expression of judges, a clear connection between an expressed opinion and the interests of justice must be established. If such connection is not clear, freedom of expression of a judge must be given preference.⁵⁶

Freedom of Expression of Judges in Social Media

Social media have become an important part of social life of many people and the public in general. Today, the number of social media users keeps growing. Social media represent an important tool of public relations. However, given the importance of judicial office and public trust in justice, the use of social media by judges may generate certain ethical risks.

The issue of judges using social media is quite complex. On the one hand, the use of social media by judges may create a perception of bias among the public. On the other hand, the use of social media may make the work of judges more accessible and understandable for the public.

The universally recognised human rights and freedoms, including freedom of expression, are just as protected in social media as they are in daily life.⁵⁷ However, personal and professional conduct of judges is subject to tighter restrictions. A traditional and, until recently, official view was that judges must not become involved in public discourse outside of courtroom. Today, however, this approach has changed.

There are no grounds to expect judges to be completely removed from social life. Moreover, complete isolation of a judge from the society in which they live would harm the interests of justice. This is precisely why simply banning judges from social media access in the digital era would be unjustified and also impossible.⁵⁸

Several countries have developed specific legislation and ethical standards which regulate judicial conduct in social media.⁵⁹ In the countries where no such regulations are in place, the limits of

55 See article, *Judges join silent rally to defend Polish justice*, The Guardian, January 2020; available at: <https://bit.ly/3dXiSNO> [last accessed on 02.03.2021]

56 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) REPORT ON THE FREEDOM OF EXPRESSION OF JUDGES Adopted by the Venice Commission, at its 103rd Plenary Session (Venice, 19-20 June 2015), para.41. Available at: <https://bit.ly/2NWyS8I> [last accessed on 27.02.2021]

57 Human Rights Council resolution 38/7. Available at: <http://bit.ly/3sZN0fL> [last accessed on 03.03.2021]

58 Independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers*, Human Rights Council Forty-first session 24 June–12 July 2019; para. 79, available at: <https://undocs.org/A/HRC/41/48> [last accessed on 03.03.2021]

59 Australia, Albania, Hungary, Montenegro, Slovenia, United Kingdom (Northern Ireland and Scotland)

freedom of expression of judges in social media are being actively discussed.⁶⁰ However, the universally recognised Bangalore Principles of Judicial Conduct define the fundamental values which should guide each judge in his or her personal and professional life. Correspondingly, when using social media, judges must mainly be guided precisely by the Bangalore Principles.

Given all of the above, we can define the main principles of using social media by judges:

- Any statement or comment posted by a judge must consolidate public trust in the justice system, comply with the dignity of judicial office, independence and impartiality of the judiciary.
- Judges must ensure that their personal views or beliefs do not have a negative effect on their professional duties, as this could cast doubt on their impartiality.
- In any view expressed in social media, they must remain respectful of their office in order to preserve and develop public trust in the judicial system.
- They must always avoid the kind of online activity which may undermine confidence in their independence and impartiality, and damage public trust in the system of justice.⁶¹

Finally, it can be said that the use of social media by judges is based precisely on those principles which already determine judicial conduct in daily, personal relations. This means that both in social media as well as in other cases, a judge must refrain from voicing opinions which may undermine the dignity of judicial office, cause conflict of interests, and damage public trust in the system of justice.⁶²

1.4. PUBLIC CONDUCT OF JUDGES IN PRACTICE AND ITS COMPLIANCE WITH INTERNATIONALLY RECOGNISED STANDARDS

In previous sections we discussed the standards established by international and local legislation with regard to freedom of expression of judges. To sum up, it can be said that freedom of expression is constitutionally guaranteed for judges just as it is for all people. However, given the role of a judge and the importance of public trust in justice, ethical restrictions that apply to judges need to be considered. This chapter examines several illustrative examples to better analyse the limits of freedom of expression of judges.

Levan Murusidze

Levan Murusidze is a judge at Tbilisi Court of Appeals with a life tenure. Murusidze is considered one of the leaders of an influential group that exists within the judiciary.⁶³ He has appeared in the media most frequently in the past years, expressing his personal views, including on the decisions he had made. In addition, he participated in public debates several times, with

60 Georgia, where the international forum on *Freedom of Expression and Judicial Ethics* has been held several times, is also among them. The forum is organised and supported by the Office of the Independent Inspector, Council of Europe, EU4Justice Judiciary Support Project, and USAID's Promoting Rule of Law in Georgia programme.

61 Independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers*, Human Rights Council Forty-first session 24 June–12 July 2019; para. 80, available at: <https://undocs.org/A/HRC/41/48> [last accessed on 03.03.2021]

62 Detailed guidelines for the use of social media by judges: NON-BINDING GUIDELINES ON THE USE OF SOCIAL MEDIA BY JUDGES, United Nations (Office on Drugs and Crime), can be found at: <https://bit.ly/3bWVYUg> [last accessed on 03.03.2021]

63 See film by Studio Monitor, "Judge Murusidze – Victim of the Regime or Servant of the System?", available at: <https://bit.ly/30bEHkx> [last accessed on 04.03.2021]

politicians and civil society representatives as his opponents. It should be noted that, in 2013-2017, Levan Murusidze was a member and secretary of the HCJ, although, for the purposes of this chapter, we are more interested in the statements he made as an individual judge rather than a Council member. Correspondingly, the examples considered in this chapter do not include the period of his HCJ membership.

Levan Murusidze has considered many high-profile cases, including the case of Girgvliani's murder. The European Court of Human Rights (ECHR) stated on this case that it was *struck by how the different branches of State power acted in concert with the domestic courts to prevent justice from being done in this gruesome homicide case*. The most prominent example of Levan Murusidze speaking publicly about the case he had considered was his participation in the public debate with the lawyer of the injured party in this case, Shalva Shavgulidze. Additionally, at this time, Shavgulidze ran as a candidate from a single-seat district in the parliamentary by-elections and was conducting an active campaign.⁶⁴ *This was unprecedented in the history of the Georgian justice.*

During this time, the judiciary was subjected to particularly strong criticism. Reports and studies by both local and international organisations were critical, talking about corruption risks and unhealthy influences within the judiciary.⁶⁵ Interestingly, Levan Murusidze called himself the leader of the judiciary⁶⁶ and, as its leader, considered himself obligated to defend the interests of justice. On the one hand, the goal may have been to protect the interests of justice, and Murusidze himself underscored this several times during the debate. On the other hand, it should be assessed whether he managed to protect the interests of justice by making these statements.

During the debate, Levan Murusidze did not deny that he effectively got involved in political activities: *"It is those political forces with which you have united who said that Levan Murusidze is apparently the main culprit in the Girgvliani case [...] It is my duty as a judge to defend the judicial corps and I cannot defend the judicial corps unless I defend myself. And if you think that the judiciary today became involved in politics, this is not the fault of the judiciary, this is your, politicians' fault."*

During the same debate, he openly stated: *"I made a great effort to take control over justice away from the National Movement and send the court on the path of real independence. [...] I cannot just derail everything and cannot make political parties or non-governmental sector feel comfortable by simply resigning when the judiciary has achieved such a great success."*

A significant part of the debate was dedicated precisely to the discussion of the Girgvliani case. Murusidze, despite the assessment in the Strasbourg Court ruling, continued to claim that he could not make any other decision and that his decision was lawful.

64 See public debate "Girgvliani case lawyer and judge against each other"; available at: <https://bit.ly/3kKKqY6> [last accessed on 04.03.2021]

65 See article, "State Department's Critical Report on Georgia's Judicial System", Liberali, 2019; available at: <http://bit.ly/3uYzAIP> [last accessed on 27.02.2021]

66 See article by Radio Liberty, "Judicial 'Clan' or Leader Judges?", 2018; available at: <http://bit.ly/3eflMNZ> [last accessed on 05.03.2021]

The conclusion by the Venice Commission reads: “In the context of a political debate in which a judge participates, the domestic political background of this debate is also an important factor to be taken into consideration when assessing the permissible scope of the freedom of judges. For instance, the historical, political and legal context of the debate, whether or not the discussion includes a matter of public interest or whether the impugned statement is made in the context of an electoral campaign are of particular importance.”⁶⁷

Two factors must be considered with regard to the involvement in public debates. First, whether the participation of a judge in such debates may undermine confidence in his or her impartiality; and second, whether such involvement may expose a judge to political attacks. In both cases, a judge must avoid participation in such debates.⁶⁸

The statements that Murusidze made during the debate did not make an impression of an impartial and independent judge defending the interests of justice. On the contrary, the opinions he had voiced were completely in line with the statements made by the government representatives⁶⁹ with the aim of discrediting Shalva Shavgulidze as a [parliamentary election] candidate from a single-seat district.

It is interesting to note that Imedi TV dedicated seven stories in its main news bulletin to the opposition single-seat district candidate, Shalva Shavgulidze. In these stories, with the aim of creating a negative context around him, Shavgulidze was equated with the former ruling party, the National Movement. The public debate that took place between Shavgulidze and Murusidze was assessed as part of this so-called campaign to discredit [Shavgulidze].⁷⁰

Because of his participation in this debate, Murusidze became target of political attacks. It should also be considered that the debate took place during the campaign period in the run up to the by-elections in Mtatsminda [District of Tbilisi]. It should be noted that representatives of both the [parliamentary] majority⁷¹ and the opposition⁷² criticised Levan Murusidze for his involvement in political processes and called his attention to judicial ethics which prohibit judges from making political statements and becoming involved in political processes.

Considering all of the above, Judge Levan Murusidze, by participating in a public debate during an election campaign, failed to create an impression of an impartial and objective party whose aim was to defend the interests of justice. In addition, the political events that unfolded as a result of this debate could not have had a positive influence on public trust in the judicial system.

67 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) REPORT ON THE FREEDOM OF EXPRESSION OF JUDGES Adopted by the Venice Commission, at its 103rd Plenary Session (Venice, 19-20 June 2015), para. 84; available at: <https://bit.ly/2NWyS8l> [last accessed on 27.02.2021]

68 The Opinion no. 3 of the Consultative Council of European Judges, on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, para. 31, Strasbourg, 19 November 2002; available at: <https://bit.ly/3b5LiDi> [last accessed on 27.02.2021]

69 See article “Shavgulidze Committed Violation, Not Murusidze – Ivanishvili on Girgvliani Case” Netgazeti, 2019; available at: <http://bit.ly/3sSwn5u> [last accessed on 05.03.2021]

70 See blog “The Candidate Who Betrayed Values – Shalva Shavgulidze Through the Prism of Imedi”, Mediachecker, 2019; available at: <http://bit.ly/3kNtuQB> [last accessed on 05.03.2021]

71 See article “Chugoshvili on Murusidze-Shavgulidze Debate: Involving a Judge in a Political Debate is a Bad Idea”, Tabula, 2019; available at: <http://bit.ly/2PsAney> [last accessed on 05.03.2021]

72 See article “Murusidze Has Become Political Activist of Georgian Dream – Elene Khoshtaria”, news.ge internet outlet, 2019; available at: <http://bit.ly/3sOW3A0> [last accessed on 05.03.2021]

Sergo Metopishvili

Sergo Metopishvili is a judge and the chairperson of the civil cases panel at Tbilisi City Court. Metopishvili is one of the influential judges of the so-called “judicial clan”.

Metopishvili is one of the most active social media users. It is noteworthy that his public statements are often discriminatory and insulting.⁷³ Metopishvili has criticised the non-governmental sector and has called it politicised. Neither does he conceal his negative attitude towards politicians who are critical of the current judicial system. He is particularly aggressive towards Nazi Janezashvili, non-judicial member of the HCJ.



Sergo Metopishvili

Despite our politicised NGOs, some politicians and politicised populists and demagogues (for example, Dolidze and Janezashvili), and despite their endless disparagement, insults and defamatory statements, despite their fake news, fake research and fake reports, we have managed to successfully continue judicial reform!!!

Metopishvili posted on his personal Facebook page.⁷⁴



Sergo Metopishvili

The mere fact that founders, directors, or board members of the companies which conduct field work for NDI polls are leaders of opposition political parties or their wives makes these polls completely untrustworthy! What objectivity are we talking about here?!⁷⁵

Metopishvili explicitly expressed his negative attitude towards opposition parties and non-governmental organisations by making this statement.



Sergo Metopishvili

When the incumbent Public Defender, so-called ‘objective’ NGOs and so-called ‘legal expert’ Dolidze turn a blind eye to offences, I recall the following: they say that, when Franklin Roosevelt was told about the atrocities committed by Nicaraguan dictator Anastasio Somoza, he replied: ‘Somoza may be a son of a bitch, but he is our son of a bitch.’!

The statements mentioned above run completely contrary to the international standards of the use of social media by judges, which imply that judges must always refrain from the online activity which could cast doubt on their impartiality and independence. In his statement, Metopishvili openly and explicitly expressed his negative attitude towards any actor who is critical of the judiciary. Naturally, this does not make him an impartial, objective and independent judge in

73 “The Coalition for an Independent and Transparent Judiciary Calls on the Independent Inspector to Study Cases of Gender-Based Harassment” 2018; available at: <http://bit.ly/3qglMhX> [last accessed on 05.03.2021]

74 This post is available at: <http://bit.ly/2MNEtgn> [last accessed on 05.03.2021]

75 This post is available at: <http://bit.ly/3rjUgCT> [last accessed on 05.03.2021]

76 This post is available at: <http://bit.ly/3bgoFFf> [last accessed on 05.03.2021]

the eyes of the public. Ultimately, **such statements damage public trust in the system of justice.**

1.5. CONSEQUENCES OF MISUSE OF FREEDOM OF EXPRESSION BY JUDGES

As noted above, a judge enjoys the constitutionally guaranteed right to freedom of expression. However, a judge is restricted in exercising this right by professional rules and rules of ethics, since misuse of freedom of expression may weaken public trust in the judicial system and damage the interests of justice.

In addition, according to the Bangalore Principles, a judge must, to the best of his or her abilities, refrain from actions which may become a reason for stripping him or her of the right to participate in court sessions and ruling on court cases.⁷⁷ For example, if a judge, in personal and professional communication, never hesitates to express negative attitudes towards a given political party, for any person, who is a member of this political party, a member of his or her family or, if only, a supporter, this may become grounds to demand recusal of this judge. Even though there are cases when a judge's recusal is inevitable in order to protect the rights of parties, ensure objective consideration and, generally, maintain trust in the judiciary, frequent recusals may cause a negative attitude towards a judge. Furthermore, this could become an additional burden for his or her colleagues. Correspondingly, a judge must manage both personal and professional relations in such a manner, so as to minimise a possibility of collision with his or her judicial duties.⁷⁸

Most importantly, a violation of the rules of ethics by a judge may become grounds for disciplinary measures against this judge.⁷⁹ However, this cannot be interpreted in such a way that any violation of the limits of freedom of expression should result in disciplinary responsibility of a judge.

The study analyses a number of cases of unethical expression of opinion by judges. Of course, any violation of ethical rules in the exercise of freedom of expression cannot be grounds for disciplining liability of a judge. Consequently, it is necessary to draw a clear line between, on the one hand, a breach of ethical obligations by a judge and, on the other hand, a disciplinary misconduct.

The system of disciplinary liability of judges has repeatedly been the subject of severe criticism. Among them, the violation of ethical norms was considered as a problem, as the existence of a separate basis for imposing disciplinary liability.⁸⁰ Finally, as a result of the amendments to the Law on Common Courts, the chapter "Disciplinary Liability and Disciplinary Proceedings of Judges of the Common Courts of Georgia" was added to the law, which detailed the grounds for disciplining the judges. The law clearly sets out the ethical misconduct, the violation of which could lead to disciplinary action against a judge.⁸¹ For example, the basis for imposing disciplinary liability may be the public expression of an opinion by a judge on a case pending

77 Commentary on the Bangalore Principles of Judicial Conduct, para.66, 2007; available at: <https://bit.ly/3rdh72Z> [last accessed on 27.02.2021]

78 Commentary on the Bangalore Principles of Judicial Conduct, para. 66, 67. 2007; available at: <https://bit.ly/3rdh72Z> [last accessed on 27.02.2021]

79 Organic Law of Georgia on Common Courts, Article 75¹

80 see. Coalition for Independent and Transparent Judiciary, legislative proposal on disciplinary liability, available at: <https://bit.ly/3cFJ5PZ> [last accessed: 27.02.2021]

81 Organic Law on Common Courts of Georgia, Article 75¹

before a court, as well as the participation in a political activity, public support of an electoral subjects in any form. Therefore, a judge can be disciplined only if his/her exercise of freedom of expression violates a specific ethical provision that is the basis for disciplinary action under the law.

For more clarity, for example, Levan Murusidze's participation in the public debate against Shalva Shavgulidze, a majoritarian MP candidate, where Murusidze, voiced useful political positions of the ruling party, can be considered a disciplinary offense.⁸² Also statements of the members of the HCoJ assessing the ongoing court case, could be considered as violation that could be disciplinary prosecuted.⁸³ Therefore, it is necessary to make it clear that the unethical expressions cited in the study, which was often used by judges, cannot be qualified as a disciplinary offense and should only be considered a violation of ethical rules.

A judge should not have an expectation that any expression of opinion or view on his or her part would result in disciplinary measures. Assuming that any case of unethical expression constitutes disciplinary misconduct, it may have a "chilling effect" on judges and prevent a dissenting opinion. Especially when in the Georgian judicial system, judges are discouraged from expressing critical opinions. For example, members of the Association - Unity of Judges⁸⁴, who had expressed critical opinions about the situation prevailing in the judiciary, were expelled from the judicial system. Moreover, disciplinary proceedings were instituted against some of them, which played an important role in gradual disappearance of critical views from the judicial corps.

We mentioned above that complete isolation of judges from the society cannot have a positive effect on the interests of justice. A judge, who exercises the right to freedom of expression, can express his or her position and, in a number of cases, this is even desirable. Especially at the time when inaction would be damaging to the interests of justice. Therefore, a judge should not have an expectation that any expression of opinion or view on his or her part would result in disciplinary measures.

Currently, an absolute majority of judges are united into the "Association of Judges"; Levan Murusidze is its chairperson and its board is composed of the members of the HCJ and other influential judges. At the Conference of Judges, decisions are made without any discussion, by absolute majority of votes, which clearly confirms that, as a result of unhealthy influences, the judicial corps has gradually become closed.⁸⁵

According to the Constitutional Court of Georgia: *"A right suffers from a 'chilling effect' if a person, out of fear of impending sanctions, is forced to refrain from fully exercising this right and this self-restraint affects the normatively unrestricted part of freedom of expression. Influenced by the 'chilling effect', the application of the norm to exercising [the right to] freedom of expression may transcend its area of regulation and effectively restrict those relations whose regulation had never even been intended by the lawmakers. Such regulation of the area of freedom of expression may cause the society to become unnecessarily closed, impose self-restrictions on its freedom of actions, force people into self-censorship in the part of the area guaranteed*

82 Organic Law on Common Courts of Georgia, Article 75¹

83 Discussed in detail in Chapter 1.4. "Public Behavior of Judges in Practice and Its Compliance with Internationally Recognized Standards."

84 The Association - Unity of Judges of Georgia was founded in June 2013. The organisation is a voluntary association of judges and can be joined by any incumbent or reserve judge.

85 See study: Transparency International Georgia, *Corruption Risks in Georgian Judiciary*, 2018, pp.40-42; <https://bit.ly/2Pxr21T> [last accessed on 22.02.2021]

by freedom of expression where there is no need for restriction at all, which, naturally, means disproportionate restriction of this right.”⁸⁶

Given this, the initiative to restrict freedom of expression of judges must be considered precisely in the context of the “chilling effect”, especially if disciplinary measures against judges are at issue.

⁸⁶ Constitutional Court of Georgia, Decision N2/2/516,542 of 14 May 2013 on the case of *Citizens of Georgia Aleksandre Baramidze, Lasha Tughushi, Vakhtang Khmaladze and Vakhtang Maisaia v. Parliament of Georgia*.

II. ROLE OF JUDICIAL BODIES IN THE PROCESS OF COMMUNICATION WITH THE PUBLIC

The role of judicial bodies in the process of communication with the public will be discussed in this chapter. Specifically, which body or official have a duty and/or right to maintain communication with the public concerning issues related to the judiciary. The role of the HCJ in this process will also be assessed as well as the correctness of forms of communication used by the Council members in practice and their compliance with international standards.

Correct communication between the judiciary and the public is of special importance in the process of improving public trust in the system of justice. Opinion No 7 of the Consultative Council of European Judges (CCJE) talks about the need to communicate with the public. According to the Opinion, for most citizens, the knowledge about the judicial system is limited to the knowledge and experience that they may have acquired while being a party in a court dispute, a witness, or a juror.⁸⁷ The role of the media in providing the public with information about the judiciary is critical but, in addition to the media, it is extremely important for this process to establish direct relations between the public and the judiciary.⁸⁸

Proper communication helps restore public trust in the judicial system. Communication with the public about the processes unfolding in the judiciary demonstrates that the corresponding institutions and their members are protecting public interest and reinforces the perception that decisions are made based on the law and corresponding deadlines are observed.⁸⁹

By means of appropriate communication, courts can preserve and strengthen the reputation of the system of justice. This, among others, implies participation in public discussions and conferences, use of internet resources, and even expression of opinions in the media.⁹⁰

2.1. WHO CAN COMMUNICATE WITH THE PUBLIC?

It is an interesting question as to which institution or person has the right and/or in some cases even a duty to communicate with the public.

According to the Guide published by the European commission for the efficiency of justice (CEPEJ),⁹¹ the following entities can communicate with the public:

- Associations of judges;
- Bodies in charge of administration of the judiciary (in Georgia's case, the HCJ);
- Courts;
- Individual judges;
- Speaker-judges.

87 Consultative Council of European Judges (CCJE) Opinion No 7, para. 9, 2005; available at: <https://bit.ly/3ejgyku>

88 Ibid.

89 Guide on communication with the media and the public for courts and prosecution authorities, European commission for the efficiency of justice (CEPEJ), 2018; available: <https://bit.ly/3kQ2lg4>

90 Ibid.

91 Guide on communication with the media and the public for courts and prosecution authorities, European commission for the efficiency of justice (CEPEJ), 2018; available: <https://bit.ly/3kQ2lg4>

In the process of communication, these entities have different rights and duties. However, in the Georgian reality, it would be particularly interesting to analyse and assess the role of the HCJ. In the past several years, precisely the HCJ members have been actively engaged in the process of communication with the public. It has been a subject of public discussion for several years now whether the HCJ had/has the right to use the communication tools they have been using in this process, and to do so with such intensity.

2.2. ROLE OF THE HIGH COUNCIL OF JUSTICE IN THE PROCESS OF COMMUNICATION WITH THE PUBLIC

Opinion No 10 of the CCJE points to the right (in some cases, obligation) of the HCJ to conduct correct communication with the public to serve the interests of justice.⁹² According to the Opinion, the HCJ must aim to protect independence of the judicial system and of individual judges, preserve the reputation of the judiciary, and strengthen public trust in the system.⁹³

As it turns out, not only does the HCJ have the right, but it also has an obligation to take concrete steps to disseminate the kind of information which would protect the reputation of justice and/or concrete judges.

Against the background of such an obligation and in order to avoid damaging outcomes, it is important that any information disseminated or steps taken in this process are evaluated and analysed many times and thoroughly in advance. According to the CCJE recommendation, when performing its role, the HCJ must use the necessary professional assistance. It is important that the HCJ staff consists not only of lawyers but also journalists, social scientists, statisticians and others.⁹⁴

In the case of *Baka v. Hungary*, the European Court of Human Rights (ECHR) established that there was interference with freedom of expression.⁹⁵ András Baka was the chair of the Supreme Court of Hungary and [the president] of the National Council of Justice. He expressed critical opinions with regard to the judicial reform unfolding in Hungary, which resulted in early termination of his mandate done by means of amending the legislation.

The ECHR established that early termination of mandate was linked to the public expression of personal opinions and exercising of his mandate by the applicant, while his dismissal from his post violated the applicant's freedom of expression. In this case, the ECHR attributed specific significance to the post of the applicant and concluded that, as a chairperson, after learning the opinion of representatives of other courts, he not only could but was obligated to express his own opinion about the legislative reform which concerned the judicial system.

According to the CCJE Opinion No 10, persons holding various administrative posts within the judicial system should make their position known not only about the reforms concerning judicial issues but also when the media or political figures or other representatives of the public by means of the media challenge the judiciary or attack concrete judges. Given that a judge considering a specific case is under the obligation to refrain from responding in public, the HCJ or the court itself should be able to respond to such challenges and attacks quickly and efficiently.⁹⁶

Despite the fact that, according to the internationally recognised standards, the HCJ and its

92 Consultative Council of European Judges (CCJE) Opinion No 10, 2007; available at: <https://bit.ly/386el7Z>

93 Ibid.

94 Consultative Council of European Judges (CCJE) Opinion No 10, 2007; available at: <https://bit.ly/386el7Z>

95 CASE OF *BAKA v. HUNGARY*, European Court of Human Rights, 2014; available: <https://bit.ly/2OvDfqC>

96 Consultative Council of European Judges (CCJE) Opinion No 10, 2007; available at: <https://bit.ly/386el7Z>

members have the right and, in some cases, even an obligation to express their opinions concerning the ongoing legislative or other significant issues related to the judiciary, the law⁹⁷ clearly and unequivocally prohibits members of the HCJ from participating in the political process. Correspondingly, the kind of expression on the part of the judges which could be assessed by objective observers as their involvement in political activities cannot be allowed. This restriction applies to both judicial⁹⁸ and non-judicial members of the HCJ.⁹⁹ Thus, in the process of defending the reputation of the judiciary, it is critically important not to cross the line between the involvement in the political processes on the one hand and the steps taken to protect the judiciary on the other.

The analysis of international standards related to this issue has shown that in the event an expression by a member of the HCJ is not related to participation in political processes and is linked exclusively to the challenges or other important issues of the judiciary, such expression is permissible. It is also important, however, to assess how unrestricted and broad such expression is and whether some form should be adhered to in this process.

2.3. NORMS OF JUDICIAL ETHICS FOR HCJ MEMBERS

The analysis of international standards has made it clear that freedom of expression of a member of a body in charge of administration of the judiciary, including a judicial member, is broader than that of an individual judge. However, the conduct of a judge, unlike a non-judicial member of the HCJ, is restricted by specific norms of ethics, such as, for example, the Bangalore Principles¹⁰⁰ and the current Code of Ethics.¹⁰¹

Due to the fact that the Bangalore Principles apply to judges from the day they take the oath, naturally, they are not freed from observing these principles after being elected to the HCJ. The obligation to observe these principles, however, does not apply to the non-judicial members of the HCJ. This does not imply that the Council's non-judicial members are completely free from the obligation to observe the rules of ethics and their freedom of expression is unrestricted. Naturally, as members of the HCJ, they must act in the interests of justice and must only promote public trust in the judiciary with their actions.¹⁰²

According to the Bangalore Principles, a judge observes the norms of ethics. A judge cannot behave inappropriately while performing any action related to his or her office.¹⁰³ To avoid damaging the reputation of the judicial system, a judicial member of the HCJ must strictly follow the principles of independence, impartiality, integrity, propriety, equality, competence and diligence.

Observing these principles is particularly important with regard to the issue of the protection of human rights, since exercising all other rights fully depends on appropriate administration of justice. Public trust in the judicial system, its moral authority and integrity plays the number one role in a contemporary democratic society. It is important that judges, both individually and

97 Organic Law of Georgia on Common Courts, Article 39; Article 47, para. 13.

98 Organic Law of Georgia on Common Courts, Article 39; available at: <https://bit.ly/30RZPMX> [last accessed on 18.03.2021]

99 Organic Law of Georgia on Common Courts, Article 47, para. 13; available at: <https://bit.ly/30RZPMX> [last accessed on 18.03.2021]

100 Bangalore Principles of Judicial Conduct, 2002; available at: <https://bit.ly/3c4lc2Y>

101 Rules of Judicial Ethics of Georgia; available at: <https://bit.ly/2PDtrej>

102 Consultative Council of European Judges (CCJE) Opinion No 10, para. 83, 2007; available at: <https://bit.ly/386el7Z>

103 Bangalore Principles of Judicial Conduct and Comments, Judicial Integrity Group, p. 37, 2015, translated; available at: <https://bit.ly/3sUZTrq>

collectively, understand the dignity and honour of their office, understand the significance of the trust that the public had placed in them, and make every effort to preserve and strengthen this trust in the judicial system.¹⁰⁴ A judge must avoid inappropriate behaviour in all kinds of judicial activities. In particular, a judge's behaviour must be in line with the high-level status of the judicial office.¹⁰⁵ Strictly observing the Bangalore Principles is critically important for the process of protecting the reputation of the judiciary.

The judicial members of the HCJ are under the obligation to observe, among others, Article 10 of the Code of Ethics: "A judge, in his or her statements must maintain appropriate civility, refrain from using insulting or humiliating words or phrases, or discriminating terminology. In addition, a judge must also advise the court staff to refrain from making this kind of statements."¹⁰⁶

The CEPEJ Guide, which contains the standards of communication with the public and the media conducted by the judicial system, also points to the need to maintain propriety with regard to the content of expression.¹⁰⁷ The communication on the part of the judiciary must be distinctive in its quality: it must be fact-based, objective and clear.¹⁰⁸ The wording used by the judiciary must be of such high quality and efficiency so as to inspire respect.¹⁰⁹

In the case of *Kudeshkina v. Russia*,¹¹⁰ the ECHR explained that even the dissemination of precise information must be done in a moderate and correct manner. It is explained in the same case ruling that the judiciary represents justice, it is a guarantor of fundamental values in a rule-of-law country. Correspondingly, in order to successfully perform its duties, it must have public trust. This is precisely why the bodies of the judicial branch are required to be as cautious as possible in order to preserve the reputation of impartial judges.¹¹¹

For the past several years, it has been a matter of public discussions whether the expressions on the part of the HCJ members used with regard to the non-governmental sector, various opposition politicians or public associations have been in line with the international standards. Concrete forms of expression used by the Council members will be analysed in the next chapter.

2.4. FORMS OF COMMUNICATION OF THE HCJ MEMBERS WITH VARIOUS REPRESENTATIVES OF THE PUBLIC

According to the internationally recognised standards, if impartiality, independence or reputation of the judiciary is threatened, the HCJ must manage to first and foremost save the system from this threat. In the chapters above, we thoroughly analysed which forms of communication the Council members are obligated to use and in what cases in order to ensure that public trust in the judiciary is not diminished. In this chapter, we will discuss specific statements and actions by members of the High Council of Justice of Georgia in the context of their compliance with international standards and the Code of Ethics.

104 Ibid.

105 Ibid.

106 Rules of Judicial Ethics of Georgia; available at: <https://bit.ly/2PDtre>

107 Guide on communication with the media and the public for courts and prosecution authorities, European commission for the efficiency of justice (CEPEJ), 2018; available: <https://bit.ly/3kQ2lg4>

108 Ibid.

109 Ibid.

110 CASE OF *KUDESHKINA v. RUSSIA*, European Court of Human Rights, 26 February 2009, par. 93 available: <https://bit.ly/3ru9W6k>

111 Ibid., para. 86

The HCJ members became particularly active in social media in 2018. This is when then HCJ Secretary Giorgi Mikautadze presented at the Council session the controversial 10-strong list of candidates for the Supreme Court judgeship. An absolute majority of the candidates on the 10-strong list were leaders or members of the influential group that exists within the judiciary, or their supporters. Furthermore, the names of some of them were linked to the recent high-profile, politically motivated cases and informal governance in the judiciary. Number one on the list was the most influential judge in the system, the chairperson of Tbilisi Court of Appeals, Mikheil Chinchaladze.

Eleven members of the HCJ endorsed the list which was sent to the Parliament on the same day. The candidates were nominated behind closed doors, in a process that was extremely opaque and suspiciously quick. Due to resistance, the nominated candidates had to withdraw their candidacies from the Parliament. The process was followed by a large-scale political and public protest and harsh criticism on the part of the international society.¹¹² In response to the justified criticism on the part of the public, members of the HCJ actively disseminated certain opinions, most of which were unethical and can even be assessed as attacks on various members of the public, including politicians, the chairperson of the Bar Association, and non-governmental organisations.

The form of expression by the HCJ and especially by its judicial members, in addition to not having the content which would serve the interests of justice and, in most cases, rather made an impression that they simply wanted to preserve their power, was also extremely unethical and inappropriate for the high status of the judicial office.

The statement by HCJ member Dimitri Gvritishvili in which he indirectly accused the victim, a female MP, of disseminating video recordings of her private life, may be assessed as particularly problematic.¹¹³ In early 2019, video footage was disseminated depicting private life of a female MP who actively opposed the election of the clan members to the Supreme Court. The MP considered this to be a personal settling of scores. According to Dimitri Gvritishvili, the dissemination of the footage “played into the hands” of the victim herself and, correspondingly, he did not rule out that that the MP herself organised the dissemination of the recordings of her personal life. Given that secret surveillance has been an extremely serious problem in Georgia for years and many public figures have already fallen victim to this kind of a crime, shifting the blame to the victim herself by Dimitri Gvritishvili must be assessed as unethical and damaging for the judicial system.

112 *The Chronology Of The One-year-long Process Of Selection Of Judges Of The Supreme Court*, Transparency International Georgia, February 2020; available at: <https://bit.ly/2OtZFbZ>

113 “[...] Gvritishvili about dissemination of recordings”, Netgazeti, 29 January 2019; available at: <https://bit.ly/2QkisXU>

Statements made by HCJ members in social media:



Dimitri Gvritshvili

Dear readers, from now on I will refer to the so-called non-governmental [organisations] as the “Gigauri-Mshvenieradze clan”.

First, I thought of putting Saladze instead of Mshvenieradze in this duo but no, it has become clear of late that Mshvenieradze is a bigger public figure 😊

I will no longer mention Janezashvili-Dolidze separately either – they are, after all, the soldiers and mouthpieces of this clan.

But I’d love to hear your suggestions of different names for this “clan” though 😊

Facebook post¹¹⁴
6 May 2019



Dimitri Gvritshvili

Ana Dolidze, this hyped-up liar [...]

Facebook post¹¹⁵
27 January 2019

Note: In this text, Dimitri Gvritshvili is addressing the non-judicial member of the HCJ appointed under the presidential quota, Ana Dolidze.



Dimitri Gvritshvili

Some immoral warts on the body of the society are hiding behind freedom of expression, making slanderous statements.

Comment on Sergo Metopishvili’s Facebook post¹¹⁶
7 January 2019

114 Facebook post by Dimitri Gvritshvili, judicial member of the High Council of Justice, 6 May 2019; available at: <https://bit.ly/380IkBx>, (screenshot: <https://cutt.ly/rvRjuR7>)

115 Facebook post by Dimitri Gvritshvili, judicial member of the High Council of Justice 27 January 2019; available at: <https://bit.ly/2Nukd3V>, (screenshot: <https://cutt.ly/PvRkcd4>)

116 Comment by Dimitri Gvritshvili, member of the High Council of Justice, on the Facebook status update by Sergo Metopishvili, member (2016-2020) of the High Council of Justice, 7 January 2019; available at: <https://bit.ly/38U9ozp>, (screenshot: <https://cutt.ly/EvRxyL5>)



Sergo Metopishvili

Would you look at Nazibrola...

She called a judge a “moron” and “shameless” at the Council session... (!?)

This incompetent person with no integrity has long lost her face..., although recently she has crossed every line! This is already a diagnosis...

Recently, everyone has seen very well how she attacks everyone and everything... I think this is a classic paranoia!

She has been a member of the High Council of Justice for three years now but she has never presented a single professional proposal or a draft decision at the Council sessions... She is just using offensive language and insulting the judges, the Council and the judicial system.

I think that only a person of a very low level, spiritually bankrupt and immoral, could behave in such a manner...

Facebook post¹¹⁷
5 August 2020

Note: At one of the sessions, Nazi Janezashvili (Non-judge Member of the HCoJ) addressed Irakli Shengelia (Judge Member of the HCoJ) and called him a “moron”.¹¹⁸ Naturally, this word is not in line with the language appropriate for an HCJ member but it is important to see and analyse the context as a whole. For years, Transparency International Georgia and other non-governmental organisations have been monitoring the HCJ sessions and it should be said unequivocally that an extremely hostile and humiliating environment has been created there for Nazi Janezashvili. The majority of the HCJ members has constantly responded to Nazi Janezashvili’s dissenting views with aggression, often using mockery and humiliating remarks in her address. Nevertheless, it is better for a member of the HCoJ to constantly act in the interest of justice and to adhere to ethical norms when expressing opinions.

The examples cited above clearly show that the forms of expression used by the HCJ members in most cases have not been in line with the best international standards, the high status of the judicial office, the Bangalore Principles, and the Rules of Judicial Ethics of Georgia. It would also be interesting to analyse the negative effect that could result from their attacks on the representatives of the non-governmental sector and the chairperson of the Bar Association, among others.

Attack on Persons Critical of the Judiciary

Attacking non-governmental organisations, politicians or the chairperson of the Bar Association have been a strategy of choice for the HCJ members for several years now. HCJ member Dimitri Gvritishvili and former HCJ member Sergo Metopishvili have been especially active in this respect. It is important to analyse whether the actions by the representatives of the judiciary

117 Facebook post by Sergo Metopishvili, judicial member (2016-2020) of the High Council of Justice, 5 August 2020; available at: <https://bit.ly/3cjzSET>, (screenshot: <https://cutt.ly/OvRcz5O>)

118 “‘You Are a Moron’ – Argument Between Janezashvili and Shengelia on Relatives”, Netgazeti, 4 August 2020; available at: <https://bit.ly/30jOhSH>

are compliant with the international standards and what could be the consequences of such attacks.

When a representative of the judicial authority makes a public statement, the only goal must be to protect the interests of justice. The form [of expression] used to this end must promote an increase of trust in justice among the public. In addition, judges, including judicial members of the HCJ, must exercise their right to freedom of expression in such a way that they do not create a perception that they are prejudiced and partial.¹¹⁹ For years now, the forms of expression used by incumbent or former member of the HCJ with regard to the non-governmental sector, opposition politicians or other persons with critical opinions have turned into attacks. On 6 March 2019, three MPs even lodged a complaint with the HCJ against Sergo Metopishvili and Dimitri Gvritishvili for making unethical and political statements.¹²⁰



Sergo Metopishvili

What politicised Eka Gigauri¹²¹ has been suggesting to us in the past days together with Sulkhan Saladze¹²² as well as several other politicised NGOs and Beselia-like¹²³ politicians can only be called insolent and excessive wilfulness!

P.S. The public has seen Kalbatoni Gigauri's "fake news", "fake reports", "fake charades" about the judicial system before, and now Kalbatoni Gigauri is disseminating her "fake fantasies"¹²⁴

*Facebook post¹²⁵
18 January 2019*

119 Consultative Council of European Judges (CCJE) Opinion No 10, 2007; available at: <https://bit.ly/386e17Z>

120 "Three MPs lodge complaint with High Council of Justice against Metopishvili and Gvritishvili", Tabula, 6 March 2019; available at: <https://bit.ly/3r9GG3Y>

121 Executive Director of Transparency International Georgia

122 Chairperson of the Young Lawyers' Association of Georgia at the time.

123 Eka Beselia was an MP who openly challenged the controversial 10-strong list of judicial candidates to the Supreme Court nominated by influential judges and, according to her own statement, resigned from the post of the chairperson of the Legal Issues Committee over the suspension of this process.

124 Reference to reports and studies published by Transparency International Georgia which are strongly critical of the judicial system.

125 Facebook post by Sergo Metopishvili, judicial member (2016-2020) of the High Council of Justice, 18 January 2019; available at: <https://bit.ly/3vD23OA>, (screenshot: <https://cutt.ly/lvRc3EM>)



Sergo Metopishvili

Woow....!!!

I think Kalbatoni Gigauri has finally lifted her mask!

Wonderful!

The more people will lift their masks and show their real faces to the public, the better!!!

Kalbatono Eka, I think you got everyone tired of all your “fake charades”, “fake reports” and “fake news”, so I would like to address Kalbatoni Gigauri and her like-minded politicians – stop tiring the public, drop this charade, you are not really interested in any criteria, if you have a so-called “black list” of judges who, in your opinion, do not deserve promotion, make this complete list public once and for all!!!

*Facebook post*¹²⁶
12 January 2019



Sergo Metopishvili

I have been thinking – how can one comment when a person is deliberately disseminating lies, “fake news”, and so on?

Why is a person doing it? This is an immoral and unworthy behaviour, is it not!
Again, I recall the following in this regard:

Who is a Pharisee? Pharisees – such people are referred to as duplicitous in the Gospel, that is to say, these people are deceitful and they are liars!!!

Pharisaism is a state when a person cannot see himself or herself, his or her true nature, the flaw within and, on the contrary, boasts about personal good qualities and merits which he or she does not really have!!!

Liars! How much is a lie and “fake news” today??? How much for immorality??? For hypocrisy???

It is unfortunate... They will not tell us the truth.

*Facebook post*¹²⁷
9 January 2019

126 Facebook post by Sergo Metopishvili, judicial member (2016-2020) of the High Council of Justice, 12 January 2019; available at: <https://bit.ly/2NudRBz>, (screenshot: <https://cutt.ly/TvRvMdl>)

127 Facebook post by Sergo Metopishvili, judicial member (2016-2020) of the High Council of Justice, 9 January 2019. Metopishvili dedicated similar posts to the heads of non-governmental organisations: Giorgi Mshvenieradze (Chairperson of Georgia Democracy Initiative (GDI) at the time), Sul Khan Saladze (Chairperson of the Georgian Young Lawyers' Association (GYLA) at the time) and Sopo Verdzeuli (One of the heads of the Human Rights Education and Monitoring Centre (EMC) at the time) available at: <https://bit.ly/3eS7zGZ> (screenshot: <https://cutt.ly/lvRmY1>), <https://bit.ly/3rZGEN7> (screenshot: <https://cutt.ly/qvRmZ8s>), <https://bit.ly/3vEZxNZ> (screenshot: <https://cutt.ly/FvRQgwp>)



Dimitri Gvritishvili

The non-governmental sector does not exist anymore; they have exposed themselves when they exceeded their mandate, the limits of the law, and demanded to expel incumbent judges from the system! It is Captain Gigauri¹²⁸ who has a clan, she has been clinging to her post as the head of Transparency since 2010! And this GYLA has become something of a KGB Academy: unless you have been its member, you cannot take up an important post and, if you do it nonetheless, they will undermine you!

*Comment on Sergo Metopishvili's Facebook post*¹²⁹
24 January 2019



Dimitri Gvritishvili

Captain Gigauri, you have finally lost your face, you are no longer a non-governmental organisation, you are a party in a political process!¹³⁰

*Comment on the Facebook post of Transparency International Georgia*¹³¹
23 January 2019

128 The term “Captain Gigauri” was first used by government supporter Goga Khaindrava. He claimed that Eka Gigauri dispersed the rally on 7 November 2007 and was promoted to this rank of captain for this action. After that, this term became one of the main messages used against Eka Gigauri by pro-government channels. It is precisely in this context that Dimitri Gvritishvili used the word “captain”, too. Available at: <https://bit.ly/3qWe2TW>

129 The comment by Dimitri Gvritishvili, judicial member of the High Council of Justice, on the Facebook post by Sergo Metopishvili, also judicial member of the High Council of Justice, 24 January 2019; available at: <https://bit.ly/38PUXww>, (screenshot: <https://cutt.ly/6vRWZte>)

130 The term “Captain Gigauri” was first used by government supporter Goga Khaindrava. He claimed that Eka Gigauri dispersed the rally on 7 November 2007 and was promoted to this rank of captain for this action. After that, this term became one of the main messages used against Eka Gigauri by pro-government channels. It is precisely in this context that Dimitri Gvritishvili used the word “captain”, too. Available at: <https://bit.ly/3qWe2TW>

131 Facebook post by Transparency International Georgia, 23 January 2019; available at: <https://bit.ly/3eOr5Ex>, (screenshot: <https://cutt.ly/6vRE4bN>)



Sergo Metopishvili

I think that the public could see well the insolence and incompetence of Giorgi Mshvenieradze!¹³²

I also think that the public has become convinced yet again of the absurdity of the claims made against Batoni Levan Murusidze!¹³³

And finally, I think that Giorgi Mshvenieradze holds a grudge against the judiciary because this system has more than once fairly tried a criminal member of his family for robbery and other crimes, specifically - his brother.¹³⁴

Note: *Sergo Metopishvili has tried to attack one of the non-governmental organisation representatives by divulging personal information about his family member.*

132 Chairperson of Georgian Democracy Initiative (GDI) at the time.

133 Levan Murusidze is a judge who considered a number of high-profile and politically motivated cases in the past.

134 The comment by Sergo Metopishvili, judicial member (2016-2020) of the High Council of Justice; screenshot: <https://cutt.ly/evRUh7Q>



Sergo Metopishvili

Ana Dolidze is once again attacking judicial independence!¹³⁵

This time, she is accompanied by Eka Beselia who has lifted her mask, Gedevan Popkhadze, Levan Gogichaishvili and several other like-minded people.

It is interesting what kind of an alliance Dolidze has formed with Beselia and politicians like her?

It is clear, however, that they have the same goal: to subdue the judiciary, obtain influence on the judicial system, and turn the Supreme Court into the politicians' "rubber stamp"!

Beselias and Dolidzes, you won't succeed!!!

This is a cheap and disgraceful intention!!!

Don't forget that, since 2012, the judicial system has been free from political pressure and the influence of politicians!!!

Beselias and Dolidzes cannot send us back into the past!!!

*Facebook post*¹³⁶
4 January 2019

Considering the fact that the influential group of judges of the HCJ have a complete and unchecked power in the judiciary while judges are often considered to be defenders of their interests, the hostile attitudes expressed by the influential judges with regard to concrete persons should be assessed as quite a dangerous precedent. Organisations and people attacked by influential judges use judicial services, too. In these conditions, a question arises whether an individual judge would be able to consider the cases of persons whom the so-called clan considers unacceptable without any bias and prejudice.

Attack on Chairperson of Bar Association

On 3 February 2019, the Georgian Bar Association issued a resolution¹³⁷ in which it strongly criticised the state of affairs in the judiciary. In its resolution, the Association openly stated: "We regret that, despite many reforms carried out in the judicial sphere since 2012, the HCJ has continued making unsubstantiated and improper decisions, which has further weakened public trust in the judicial system. This culminated in making an expedited, opaque, biased and controversial decision concerning the nomination of judges to the Supreme Court."

¹³⁵ Ana Dolidze was a member of the High Council of Justice appointed under the president's quota. She constantly confronted the influential judges within the judicial system, on account of which she often became a victim of their attacks.

Eka Beselia, Gedevan Popkhadze and Levan Gogichaishvili were MPs who openly protested against the fact that the clan presented a controversial 10-strong list of candidates for the Supreme Court judgeship. They also started talking openly about influential judges in the judiciary. Due to the confrontation with their team, they later left the Georgian Dream party, too.

¹³⁶ Facebook post by Sergo Metopishvili, judicial member (2016-2020) of the High Council of Justice, 4 January 2019; available at: <https://bit.ly/3bWgLRz>, (screenshot: <https://cutt.ly/DvRU4e3>)

¹³⁷ Resolution of the extraordinary general assembly of the Georgian Bar Association on independence and quality administration of justice of the judiciary, 3 February 2019; available at: <https://bit.ly/3kQhs9i>

In response to this resolution, incumbent HCJ member Dimitri Gvritishvili posted the following [on Facebook]:¹³⁸



Dimitri Gvritishvili

A 'resolution' elaborated by the Georgian Bar Association or, more precisely, by its management, which saw the light on 3 February, is unlawful, unsubstantiated, a mix of incompetence and provocation.

[...] Unfortunately, the current leadership of the Association – Davit Asatiani and his group – continued the former chairperson Zaza Khatiashvili's truly flawed policy: involvement in political processes, conducting an unethical and libellous campaign against the judiciary.

I would like to ask him a question: whose 'order' did the judiciary fulfil when it did not uphold the request submitted by a group of lawyers – Levan Janashia and others – to suspend the elections of the Bar Association chairperson until the lawfulness of the first round of elections was established? You became the chairperson as a result of those elections, did you not? Or do you only like the judiciary when it makes decisions in your favour but not at other times?

[...] I know that lawyers have distanced themselves from this 'resolution'; even the lawyers who attended the assembly did not have the opportunity to fully understand the content of the 'resolution' because they were presented with a fait accompli and were made to make their decision under force majeure. These lawyers are now openly declaring their positions in social media, which I welcome and hope that all sensible lawyers will soon distance themselves from this outrageous process!

Facebook post
10 February 2019

Naturally, an HCJ member is authorised to respond to the claims and criticism against the judiciary. A problem in this process may be in pointing out a concrete case which concerns the chairperson of the Bar Association and reminding him that this case was ruled in his favour. This may be assessed as an attempt to form an opinion by using influence. Also, calling on other lawyers to distance themselves from the resolution critical of the judiciary should be considered improper communication with the body of lawyers. Moreover, such action may contain signs of an attempt to influence free and critical opinions.

Premature Assessment of Ongoing Court Cases

According to the Organic Law on Common Courts, public expression of an opinion about an ongoing court case by a judge is considered one of the forms of disciplinary misconduct.¹³⁹

On 21 September 2017, a precedent was established when freedom of speech was restricted over the criticism targeting a judge. Tbilisi City Court fined Fady Asly, chairperson of the National Committee of the International Chamber of Commerce, for GEL 3,000 for criticising Judge Vladimer Kakabadze. Fady Asly called the judge "corrupt" because of the decision he had made on the Philip Morris case. Tbilisi City Court issued an official statement regarding this occurrence before the court ruling came into force.

¹³⁸ Facebook post by Dimitri Gvritishvili, judicial member of the High Council of Justice, 10 February 2019; available at: <https://bit.ly/2MZd1MW>, (screenshot: <https://cutt.ly/lvRPu4p>)

¹³⁹ Organic Law of Georgia on Common Courts, Article 75¹ para. 8, sub-para. "b.a".

“The judge has restored his tarnished dignity. Tbilisi City Court made a precedent-setting decision. For the first time in the history of justice, a judge has restored his tarnished honour and dignity in court. [...] According to the lawsuit documents, a person discontent with a court decision made unsubstantiated statements which damaged not only professional reputation of a concrete judge but aimed to discredit the judge and the judiciary, thus crudely violating presumption of innocence.”

In addition to Tbilisi City Court, the HCJ members, too, expressed their attitudes in advance thus creating a danger of influencing the decision of the court of appeals instance. Before Judge Vladimer Kakabadze received a lifetime appointment, some members of the HCJ assessed the decision as “important” and “precedent-setting” during an interview in October 2017.¹⁴⁰ Later, the Court of Appeals ruled to uphold this dispute but the Supreme Court annulled the result and ruled against Vladimer Kakabadze.¹⁴¹

When an HCJ member, who represents a body in charge of administration of the judiciary, assesses a case which is not finished and whose ruling is not yet in force, this can be assessed not only as an inappropriate expression of opinion but also as a disciplinary misconduct.

2.5. ROLE OF SPEAKER-JUDGES IN THE PROCESS OF COMMUNICATION WITH THE PUBLIC

To ensure consistent communication and to provide the media with information, some judicial systems have an institution of a special speaker. This is a designated person tasked with public communication on behalf of the judiciary on general and specific issues.¹⁴² According to the 2011-2012 report of the European Network of Councils for the Judiciary (ENCJ), a speaker must have certain experience in communication and does not necessarily need to also be a judge.¹⁴³ The existence of a speaker in the judicial system has an advantage of relieving judges from communication with the media and allowing them to fully dedicate their time to fulfilling their judicial duties.¹⁴⁴ In case of speaker-judges, the advantage is that they have a thorough knowledge of the specific issues concerning the functioning of the judicial system.¹⁴⁵

The existence of the institution of a speaker is one of the direct recommendations made by the CCJE¹⁴⁶ and ENCJ.¹⁴⁷

In general, a speaker is responsible for all communication on behalf of a corresponding judicial body. Thus, a speaker should always be accessible in order to be able to perform this task in

140 “The Process of Lifetime Appointments of Judges is Flawed”, Coalition for an Independent and Transparent Judiciary, 2017; available at: <https://goo.gl/77dgoa>

141 “Fady Asly won the case against Vladimer Kakabadze in the Supreme Court”, bm.ge, 17 April 2019; available at: <https://bit.ly/30mRQY4>

142 „Guide on communication with the media and the public for courts and prosecution authorities, European commission for the efficiency of justice (CEPEJ), 2018; available: <https://bit.ly/3kQ2lg4>

143 Justice, Society and the Media, European Network of councils for the Judiciary (ENCJ), report 2011-2012, pg.3; available: <https://bit.ly/3c8RN7L>

144 „Guide on communication with the media and the public for courts and prosecution authorities, European commission for the efficiency of justice (CEPEJ), 2018; available: <https://bit.ly/3kQ2lg4>

145 Ibid.

146 Consultative Council of European Judges (CCJE) Opinion No 7, para. 9, 2005; available at: <https://bit.ly/3ejgyku>

147 „Justice, Society and the Media, European Network of councils for the Judiciary (ENCJ), report 2011-2012, pg.3; available: <https://bit.ly/3c8RN7L>

full. A speaker identifies and meets the specific needs of communication in accordance with the law and the situation.¹⁴⁸

According to the general rule, a speaker must be personally subordinated to the judge who governs a given judicial body (court chairperson). Such supervision ensures accurate communication on the part of the court.¹⁴⁹

In Georgia's case, an institution of speaker-judges has been established.¹⁵⁰ A chairperson of a corresponding court can nominate candidates for the post of a speaker-judge. The HCJ makes the final decision on this issue. It is mentioned in the 2018-2019 report by former HCJ Secretary Giorgi Mikautadze¹⁵¹ that the Council approved speaker-judges for Tbilisi City Court and Tbilisi Court of Appeals. It is also noted that these judges received additional special training in efficient communication.

Even though examples of communication by speaker-judges with the public can certainly be found on the internet, in practice this communication is quite scarce.¹⁵² In order for the speaker-judge institution to acquire some practical meaning, it must ensure that it conducts proactive, regular, precise, sufficient, consistent and appropriate communication with the public.¹⁵³

148 Guide on communication with the media and the public for courts and prosecution authorities, European commission for the efficiency of justice (CEPEJ), 2018; available: <https://bit.ly/3kQ2lg4>

149 Ibid.

150 High Council of Justice Decision No 1/14 of 18 January 2016; available at: <https://bit.ly/2PLESkR>

151 2018-2019 Annual Report by High Council of Justice Secretary Giorgi Mikautadze; available at: <https://bit.ly/3qqt2Js>

152 *Collection of Articles about Justice*, Human Rights Education and Monitoring Centre (EMC), 2020, p. 102; available at: <https://bit.ly/3sVawuk>

153 Guide on communication with the media and the public for courts and prosecution authorities, European commission for the efficiency of justice (CEPEJ), 2018; available: <https://bit.ly/3kQ2lg4>

CONCLUSION

When exercising the right to freedom of expression, judges are obligated to consider the interests of justice. This is precisely why judges are restricted by the rules of professional ethics in their activities. Judicial conduct must be in line with the requirements of impartiality, objectivity, fairness, equality and professionalism, which implies that a judge must refrain from any political activity which may have a negative effect on the public perception of his or her impartiality.

Freedom of expression of judicial members of the HCJ is broader than that of individual judges. However, their conduct, unlike non-judicial members of the Council, is restricted by the Rules of Judicial Ethics. This does not imply that freedom of expression of the Council's non-judicial members is unrestricted. The HCJ members must act in the interests of justice and facilitate the increase of trust in the judiciary. Naturally, this does not mean that non-judicial members of the HCJ do not have the right to express critical opinions regarding flawed trends within the judicial system.

In case of the Georgian judiciary, the form of expression used by judicial members of the HCJ as well as some individual judges, in some cases, failed to comply with the best international standards, the high status of the judicial office, the Bangalore Principles, and the Rules of Judicial Ethics of Georgia.

Correct communication between the judiciary and the public is especially important for the process of increasing public trust in justice. The HCJ has an obligation to take specific steps to protect the interests of justice and/or the reputation of a concrete judge. However, it is important to maintain a boundary between ethical obligations and steps taken for the benefit of justice. In addition, an institution of speaker-judges may also be important for the process of efficient communication with the public. Even though such an institution exists in the Georgian judiciary, its communication with the public is inadequate. In its current form, this institution cannot fulfil the task of efficient communication with the public.

A judge must not have an expectation that exercising the right to freedom of expression may result in disciplinary measures against him or her. A judge is authorised to speak publicly about the matters which directly affect fundamental issues of judicial performance. In the Georgian judicial system, however, the expression of critical opinions by judges is not encouraged. In the past, those judges who had expressed their critical opinions about the situation within the judiciary, were gradually expelled from the judicial system. Moreover, disciplinary proceedings were instituted against some of them. These circumstances played an important role in the gradual disappearance of critical views from the judicial corps.